

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PATRICK BARNICLE, on Behalf of Himself : No. 1:13-cv-00925-AKH
and Others Similarly Situated, :
: **CLASS ACTION**
Plaintiff, :
: v. :
: **MOVANT KBC ASSET
MANAGEMENT NV'S NON-
OPPOSITION RESPONSE TO
COMPETING MOTIONS FOR
APPOINTMENT AS LEAD PLAINTIFF**
MELLANOX TECHNOLOGIES, LTD, EYAL :
WALDMAN, MICHAEL GRAY and JACOB :
SHULMAN, :
: Defendants.
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DAVID R. RYAN, JR., Individually and on : No. 1:13-cv-01047-AKH
Behalf of All Others Similarly Situated, :
: Plaintiff, :
: v. :
: MELLANOX TECHNOLOGIES, LTD, EYAL :
WALDMAN, MICHAEL GRAY and JACOB :
SHULMAN, :
: Defendants.
----- x
VALENTIN PETROV, Individually and On : No. 1:13-cv-01225-AKH
Behalf of All Others Similarly Situated, :
: Plaintiff, :
: v. :
: MELLANOX TECHNOLOGIES, LTD, EYAL :
WALDMAN, MICHAEL GRAY and JACOB :
SHULMAN, :
: Defendants.
----- x

On April 8, 2013, KBC Asset Management NV (“KBC”) moved for consolidation of all related actions, appointment as lead plaintiff, and approval of its selection of lead counsel in the above-captioned securities fraud class actions against Mellanox Technologies, Ltd. (“Mellanox”) and certain of Mellanox’s officers and directors. Three other movants: Eisenberg O. Management & Consulting Ltd. (“Eisenberg”); the Mellanox Institutional Investor Group; and Shailesh C. Kadakia (“Kadakia”), also filed a motion for lead plaintiff on that day in this District. *See* Competing Movants’ Financial Interest Summary, attached as Exhibit 8 to the Declaration of David A. Rosenfeld in Support of Movant KBC Asset Management NV’s Non-Opposition Response to Competing Motions for Appointment as Lead Plaintiff (“Rosenfeld Response Decl.”), submitted concurrently herewith.

Pursuant to the Private Securities Litigation Reform Act of 1995 (“PSLRA”), district courts are to adopt a presumption that the applicant with the largest financial interest in the relief sought by the class that also satisfies the requirements of Federal Rule of Civil Procedure Rule 23 is the “most adequate plaintiff.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). KBC suffered losses of \$2.7 million from Mellanox common stock transactions on a U.S. exchange during the Class Period, and is otherwise adequate to serve as lead plaintiff. *See* Dkt. No. 25 at 1-2, 7-8.¹ KBC is a sophisticated institutional investor based in Belgium that has prior experience serving as a lead plaintiff. *See id.*

Here, while KBC is the exact type of large institutional investor contemplated by the PSLRA and satisfies the Rule 23 requirements at this stage, KBC does not appear to have the largest financial interest in the relief sought by the class. *See* Rosenfeld Response Decl., Ex. 8. Should the Court find, however, that Eisenberg or the Mellanox Institutional Investor Group are

¹ References to “Dkt. No. ___” are to filings in *Barnicle v. Mellanox Technologies, Ltd., et al.*, No. 1:13-cv-00925-AKH (S.D.N.Y.).

unwilling or unable to satisfy any of the PSLRA's requirements for appointment as lead plaintiff, KBC stands ready, willing, and able to fulfill that role on behalf of the class.

DATED: April 25, 2013

Respectfully submitted,

ROBBINS GELLER RUDMAN & DOWD LLP

s/ David A. Rosenfeld

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*Counsel for Plaintiff and [Proposed] Lead Counsel
for the Class*

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 25, 2013.

s/ David A. Rosenfeld

David A. Rosenfeld

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Mellanox Institutional Investor Group

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